

Adopted	Rejected
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## COMMITTEE REPORT

YES:	9
NO:	0

### MR. SPEAKER:

*Your Committee on Technology, Research and Development, to which was referred House Bill 1046, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1           Page 2, line 3, delete "or IC 24-5-14.5." and insert "**IC 24-5-14.5,**
- 2           **or IC 24-5-14.6.**".
- 3           Page 6, after line 17, begin a new paragraph and insert:
- 4           "SECTION 3. IC 24-5-14.6 IS ADDED TO THE INDIANA CODE
- 5           AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 6           JULY 1, 2007]:
- 7           **Chapter 14.6. Customer Records of Telecommunications**
- 8           **Service Providers**
- 9           **Sec. 1. (a) As used in this section, "confidential customer**
- 10          **records" refers to any of the following:**
- 11           **(1) Information that:**
- 12           **(A) relates to the quantity, technical configuration, type,**
- 13           **destination, location, and amount of use of a**
- 14           **telecommunications service subscribed to by a customer of**

1           a telecommunications service provider; and  
 2           **(B) is made available to the telecommunications service**  
 3           **provider by the customer solely by virtue of the**  
 4           **relationship between the customer and telecommunications**  
 5           **service provider.**

6           **(2) Information contained in any:**

- 7           **(A) bill;**
- 8           **(B) itemization; or**
- 9           **(C) account statement;**

10          **issued to a customer by a telecommunications service**  
 11          **provider for telecommunications service offered by the**  
 12          **provider and subscribed to by the customer.**

13          **(b) The term does not include:**

14           **(1) information collected for or on behalf of customers**  
 15           **subscribing to caller ID service (as defined in IC 24-5-14.5-3)**  
 16           **or other similar technologies;**

17           **(2) collective data:**

18           **(A) that:**

- 19           **(i) is maintained by a telecommunications service**  
 20           **provider; and**
- 21           **(ii) relates to a group or category of services or**  
 22           **customers; and**

23           **(B) from which individual customer identities and**  
 24           **characteristics have been removed; or**

25           **(3) subscriber list information (as defined in 47 U.S.C.**  
 26           **222(h)(3)).**

27          **Sec. 2. (a) As used in this chapter, "telecommunications service**  
 28          **provider":**

29           **(1) has the meaning set forth in IC 8-1-2.9-0.5; and**

30           **(2) includes an employee, officer, or agent of the**  
 31           **telecommunications service provider acting in the course of**  
 32           **the person's employment or relationship with the**  
 33           **telecommunications service provider.**

34          **(b) The term includes a person that offers any of the following:**

35           **(1) Voice over Internet Protocol (VOIP).**

36           **(2) Voice over power lines.**

37           **(3) Any form of wireless telephone service, including the**  
 38           **following:**

1 (A) Cellular telephone service.

2 (B) Broadband personal communications service.

3 (C) Covered specialized mobile radio service.

4 (D) Any successor technology, including next generation or  
5 third generation service.

6 Sec. 3. Except as provided in section 7 of this chapter, a person  
7 shall not knowingly obtain, or attempt or conspire to obtain,  
8 confidential customer records from a telecommunications service  
9 provider by doing any of the following:

10 (1) Making false or fraudulent statements or representations  
11 to a telecommunications service provider.

12 (2) Making false or fraudulent statements or representations  
13 to a customer of a telecommunications service provider.

14 (3) Providing, through any means, including the Internet, a  
15 document or other information to a telecommunications  
16 service provider if the person knows that the document or  
17 other information:

18 (A) is forged, counterfeit, lost, or stolen;

19 (B) was obtained fraudulently or without the customer's  
20 consent; or

21 (C) contains a false or fraudulent statement or  
22 representation.

23 (4) Accessing one (1) or more customer accounts of a  
24 telecommunications service provider:

25 (A) through the Internet without the customer's prior  
26 authorization; or

27 (B) by:

28 (i) accessing without authorization; or

29 (ii) exceeding the person's authorized access to;

30 a computer data base maintained by the  
31 telecommunications service provider.

32 Sec. 4. Except as provided in section 7 of this chapter, a person  
33 shall not knowingly sell or transfer, or attempt or conspire to sell  
34 or transfer, confidential customer records of a telecommunications  
35 service provider without the prior authorization of the customer to  
36 whom the records pertain.

37 Sec. 5. Except as provided in section 7 of this chapter, a person  
38 shall not knowingly:

1           (1) purchase, receive, or use; or  
 2           (2) attempt or conspire to purchase, receive, or use;  
 3       **confidential customer records of a telecommunications service**  
 4       **provider without the prior authorization of the customer to whom**  
 5       **the records pertain.**

6           **Sec. 6. Except as provided in section 7 of this chapter, a person**  
 7       **shall not knowingly:**

8           (1) disclose or allow access to; or  
 9           (2) attempt or conspire to:  
 10          (A) disclose; or  
 11          (B) allow access to;  
 12       **confidential customer records of a telecommunications service**  
 13       **provider without the prior authorization of the customer to whom**  
 14       **the records pertain.**

15       **Sec. 7. (a) This chapter does not prohibit or restrict:**

16           (1) any lawfully authorized investigative, protective, or  
 17       **intelligence activity of:**

18           (A) the United States;  
 19           (B) the state or a political subdivision of the state; or  
 20           (C) any other state or a political subdivision of that state;  
 21       **or**

22           (2) any other lawful action of:

23           (A) a law enforcement agency; or  
 24           (B) any officer, employee, or agent of a law enforcement  
 25       **agency;**  
 26       **in connection with the performance of the official duties of the**  
 27       **agency.**

28       (b) Section 6 of this chapter does not apply to a  
 29       **telecommunications service provider that discloses or allows access**  
 30       **to confidential customer records of the telecommunications service**  
 31       **provider:**

32           (1) in response to a lawful request from:

33           (A) a unit of government described in subsection (a)(1); or  
 34           (B) a law enforcement agency;

35           (2) in compliance with a state or federal law or a court order;  
 36           (3) to another telecommunications service provider to the  
 37       **extent necessary to provide telecommunications service**  
 38       **between or within service areas; or**

(4) to a communications service provider (as defined in IC 8-1-32.5-4) that provides communications service (as defined in IC 8-1-32.5-3) to a customer of the telecommunications service provider over the lines or other infrastructure of the telecommunications service provider, to the extent necessary for the communications service provider to provide the communications service subscribed to by the customer.

(c) Notwithstanding sections 5 and 6 of this chapter, a telecommunications service provider may use, disclose, or permit access to confidential customer records of the telecommunications service provider:

(1) for any of the purposes set forth in 47 U.S.C. 222(d); or

(2) to the extent necessary to:

(A) test the security procedures or systems of the telecommunications service provider for maintaining the confidentiality of customer records and information; or

(B) investigate an allegation of misconduct or negligence on the part of an employee, officer, or agent of the telecommunications service provider.

Sec. 8. (a) This section applies to a violation of this chapter that occurs after June 30, 2007.

(b) Except as provided in subsections (c), (h), and (i), this section applies to a telecommunications service provider that discovers or is notified that confidential customer records of the telecommunications service provider have been:

(1) disclosed to; or

(2) acquired by;

an unauthorized person in violation of this chapter. A telecommunications service provider to whom this section applies shall notify each Indiana customer whose confidential customer records were disclosed or acquired in violation of this chapter.

(c) This subsection applies to:

(1) a third party; or

(2) an affiliate of a telecommunications service provider;

that maintains or administers confidential customer records on behalf of the telecommunications service provider. If a third party or an affiliate described in this subsection discovers or is notified

1 of a violation described in subsection (b), the third party or affiliate  
2 shall immediately notify the telecommunications service provider  
3 of the violation, subject to subsection (d).

4 (d) A person required by this section to provide notice of a  
5 violation of this chapter shall provide the notice:

6 (1) without unreasonable delay; and

7 (2) in a manner consistent with:

8 (A) the legitimate needs of law enforcement or the attorney  
9 general, as described in subsection (e); and

10 (B) any measures necessary to:

11 (i) determine the scope of the violation; and

12 (ii) restore the reasonable integrity of the confidential  
13 customer records of the telecommunications service  
14 provider.

15 (e) A notice required under this section:

16 (1) may be delayed if a law enforcement agency or the  
17 attorney general determines that the notice will impede a  
18 criminal or civil investigation of the violation of this chapter;  
19 and

20 (2) shall be made immediately after the law enforcement  
21 agency or the attorney general determines that the notice will  
22 not compromise the investigation.

23 (f) Except as provided in subsections (g) and (h), a  
24 telecommunications service provider shall provide any notice  
25 required under this section to an affected Indiana customer:

26 (1) by United States mail; or

27 (2) by electronic mail, if the customer has provided the  
28 telecommunications service provider with the customer's  
29 electronic mail address.

30 (g) If a telecommunications service provider is required to  
31 provide notice under this section to more than five hundred  
32 thousand (500,000) Indiana customers, or if the  
33 telecommunications service provider determines that the cost of  
34 the notice to all affected Indiana customers will be more than two  
35 hundred fifty thousand dollars (\$250,000), the telecommunications  
36 service provider may elect to provide the notice by using both of  
37 the following methods:

38 (1) Conspicuous posting of the notice on the web site of the

telecommunications service provider, if the telecommunications service provider maintains a web site.

(2) Notice to major news reporting media in the geographic area in which Indiana customers affected by the violation reside.

(h) A telecommunications service provider that maintains its own customer notification procedures as part of an information privacy policy or a security policy is not required to provide separate notice under this section if the telecommunications service provider's information privacy policy or security policy is at least as stringent as the notice requirements described in this section.

(i) If a violation described in subsection (b) involves the unauthorized acquisition or disclosure of confidential customer records that include any personal information (as defined in IC 24-4.9-2-10) of the affected Indiana customers:

(1) the telecommunications service provider; and

(2) any person described in subsection (c), if applicable;

shall provide notice in accordance with IC 24-4.9 instead of this section.

(j) A person that:

(1) is required to give notice under subsection (b) or (c); and

(2) fails:

(A) to give the required notice; or

(B) to give the notice in accordance with this section;

commits a deceptive act that is actionable only by the attorney general under this subsection. However, a failure to provide any required notice in connection with a related series of violations of this chapter constitutes one (1) deceptive act for purposes of this subsection. The attorney general may bring an action to obtain any remedy available under IC 24-4.9-4-2 for the breach of the security of a data system.

Sec. 9. (a) Subject to subsection (c), this section applies to a violation of this chapter, other than a violation of section 8 of this chapter, that occurs after June 30, 2007.

(b) A person who knowingly violates this chapter commits a Class B misdemeanor. However, the offense is a Class D felony if the person has a previous unrelated conviction under this chapter.

(c) If a violation of section 4, 5, or 6 of this chapter:

1           (1) occurs after June 30, 2007; and  
 2           (2) involves the sale, transfer, purchase, receipt, use, or  
 3           disclosure of confidential customer records obtained in  
 4           violation of section 3 of this chapter before July 1, 2007;  
 5           only the violation of section 4, 5, or 6 of this chapter may be  
 6           prosecuted under this section.

7           Sec. 10. (a) Subject to subsection (c), this section applies to a  
 8           violation of this chapter, other than a violation of section 8 of this  
 9           chapter, that occurs after June 30, 2007.

10          (b) A person who violates this chapter commits a deceptive act  
 11          that is:

- 12           (1) actionable by the attorney general under IC 24-5-0.5-4(c);
- 13           and
- 14           (2) subject to the penalties set forth in IC 24-5-0.5.

15          An action by the attorney general for a violation of this chapter  
 16          may be brought in the circuit or superior court of Marion County.

17          (c) If a violation of section 4, 5, or 6 of this chapter:

18           (1) occurs after June 30, 2007; and  
 19           (2) involves the sale, transfer, purchase, receipt, use, or  
 20           disclosure of confidential customer records obtained in  
 21           violation of section 3 of this chapter before July 1, 2007;  
 22           only the violation of section 4, 5, or 6 of this chapter is a deceptive  
 23           act subject to IC 24-5-0.5.

24          Sec. 11. (a) Subject to subsection (d), this section applies to a  
 25          violation of this chapter, other than a violation of section 8 of this  
 26          chapter, that occurs after June 30, 2007.

27          (b) Except as provided in section 12 of this chapter, a person  
 28          who is aggrieved by a violation of this chapter may bring an action  
 29          against any other person:

30           (1) responsible for; or  
 31           (2) who knowingly participated in;  
 32          the violation. An action under this subsection may be brought in  
 33          the circuit or superior court of the county of residence of the  
 34          person bringing the action.

35          (c) A person who brings an action under subsection (b) may seek  
 36          any or all of the following damages:

- 37           (1) Statutory damages of five hundred dollars (\$500) for each  
 38           violation of this chapter.



1           **(2) The person's actual damages, including court costs and**  
 2           **attorney's fees.**

3           **(d) Upon petition by any person that another person has**  
 4           **violated this chapter, the circuit or superior court of the**  
 5           **petitioner's county of residence or principal place of business in**  
 6           **Indiana may enjoin the respondent from further violations. The**  
 7           **injunctive relief available under this subsection is in addition to**  
 8           **any damages to which the petitioner may be entitled under**  
 9           **subsection (c).**

10          **(e) If a violation of section 4, 5, or 6 of this chapter:**

11           **(1) occurs after June 30, 2007; and**

12           **(2) involves the sale, transfer, purchase, receipt, use, or**  
 13           **disclosure of confidential customer records obtained in**  
 14           **violation of section 3 of this chapter before July 1, 2007;**

15          **only the violation of section 4, 5, or 6 of this chapter is actionable**  
 16          **by a person, including a customer, under this section.**

17          **Sec. 12. A customer does not have a cause of action against a**  
 18          **telecommunications service provider for a violation of this chapter**  
 19          **unless the violation resulted from the telecommunications service**  
 20          **provider's gross negligence or intentional wrongdoing."**

21          Renumber all SECTIONS consecutively.

(Reference is to HB 1046 as introduced.)

**and when so amended that said bill do pass.**

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Representative Reske